Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
Petition to Establish Policies and Rules Pertaining to the Equal Access Obligations of Cellular Licensees	RM-8012

COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Michael F. Altschul

Cellular Telecommunications
Industry Association
1133 21st Street, N.W.
Third Floor
Washington, D.C. 20036
(202) 785-0081

Dated: September 2, 1992

SUMMARY

The Cellular Telecommunications Industry Association ("CTIA") opposes MCI's petition seeking a comprehensive rulemaking proceeding to consider the propriety of equal access requirements for all cellular providers. Because the MCI petition would impose substantial costs upon cellular companies and their customers without real benefit to interexchange competition, the petition should be dismissed as contrary to the public interest.

Equal access obligations have been imposed only in unique circumstances, primarily where a local bottleneck provides the sole means for interexchange carriers to gain access to their customers. Since cellular service is available on a competitive basis, and since equal access is provided to cellular subscribers by at least one cellular carrier in an overwhelming majority of markets throughout the United States, it is plain that government intervention is unnecessary.

Finally, imposing an equal access obligation on cellular carriers will inconvenience cellular subscribers and burden subscribers, carriers, and the Commission with substantial costs. Analysis of the economic impact of the MCI petition demonstrates that these costs -- and the unnecessary regulatory burden on both the Commission's resources and competition -- would vastly exceed any marginal benefit to consumers.

Table of Contents

Introduction 2

I. There Is No Factual or Legal Basis for Imposing an Equal Access Requirement 3

II. The FCC Has Chosen to Impose Its Own Equal Access Obligations Only Upon Finding a Bottleneck that Impairs Consumer Welfare 6

III. Cellular Carriers and Their Customers Would Incur Substantial Costs If an Equal Access Requirement Were Imposed 11

IV. Conclusion 15

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition to Establish Policies and Rules Pertaining to the Equal Access Obligations of Cellular Licensees	)	RM-8012

COMMENTS OF THE CELLULAR
TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA") hereby files its comments in response to the Commission's Public Notice seeking comments on the above-captioned petition filed by MCI Telecommunications Corporation.[1] CTIA is the trade association of the cellular industry. Its members include over 90% of the licensees providing cellular service to the United States and Canada. CTIA's membership also includes cellular equipment manufacturers, support service providers, and others with an interest in the cellular industry.

The MCI petition requests a rulemaking to promulgate a requirement for all cellular licensees to interconnect with interexchange carriers via uniform, nationwide equal access procedures. Because the MCI petition would impose substantial costs upon cellular companies and their customers without real

[1]The MCI petition was filed with the Commission on June 2, 1992, and the Public Notice issued on June 10, 1992. Public Notice, DA 92-745. By an order released July 28, 1992, the Common Carrier Bureau extended the date for filing comments to September 2, 1992. Order, DA 92-1016.

benefit to interexchange competition, the petition should be dismissed as contrary to the public interest.

INTRODUCTION

The MCI petition fails to present any adequate basis for Commission action, much less than justification for the substantial costs that an equal access conversion requirement would impose. The retail aspects of the cellular business already have been found by the Commission to be competitive. Government interference in such markets has long been eschewed, and properly so, in such circumstances. MCI has proffered no basis for departing from this time-tested policy.

Indeed, marketplace realities confirm the wisdom of the general rule. The very fact that the competitors of the Bell operating company ("BOC") affiliated cellular licensees are successfully competing without offering customers presubscription opportunities plainly shows that presubscription is relatively unimportant to cellular consumers.[2]

Equal access obligations have been imposed by both the antitrust courts and this Commission only where unique, well-defined conditions exist. More specifically, equal access has been imposed on the BOCs as a term of the settlement of the Justice Department's historic antitrust litigation against the Bell System, to the GTE operating companies by the Justice Department's

---

[2]Indeed, many cellular carriers have indicated to CTIA that they have received no requests from subscribers seeking a particular long distance carrier's service, nor have they received a single request for equal access.

subsequent antitrust decree permitting GTE to acquire a long distance carrier, and by agency extension (but on a more limited basis) to the local exchange services of the independent telephone companies. The only other instance in which long distance telephone companies have been awarded the opportunities of presubscription, balloting and allocation procedures is the sui generis case of operator service providers/pay telephone providers, where the consumer outcry was so great and the diminution in consumer welfare was so apparent that an amendment to the Communications Act was deemed appropriate by the U.S. Congress in order to rectify the problem. As discussed in detail below, none of these cases is at all applicable to the cellular industry.

Finally, the MCI petition would needlessly impose substantial costs upon cellular providers, cellular customers and taxpayers. While MCI as a private enterprise may choose to ignore these costs, this Commission cannot and should not share MCI's indifference. The costs would demonstrably outpace any arguable benefit. The petition should be summarily dismissed.

I. THERE IS NO FACTUAL OR LEGAL BASIS FOR IMPOSING AN EQUAL ACCESS REQUIREMENT.

With virtually no analysis or support, the MCI petition argues that all cellular licensees should be required to offer equal access. The only apparent rationale offered for this position is the non sequitur that since the cellular affiliates of the Bell Operating Companies are subject to such a requirement by operation

of the Modification of Final Judgment ("MFJ"),[3] the FCC should similarly impose one. This argument does not withstand even the most modest inquiry.

The MFJ's equal access requirements were imposed for a number of reasons wholly inapplicable to cellular companies. First, the equal access provisions of the consent decree were expressly designed to remove the historic remnants of the vertically integrated Bell System which gave AT&T superior and unique access to the landline networks of the local telephone companies.[4] This historical relationship with a single long distance carrier of course does not obtain with cellular -- a service which did not even exist in 1982.

A second rationale for the MFJ's requirement rested upon the observation that the local exchange networks of the local operating companies were bottlenecks to the provision of long distance service, and equal interconnection was explained to be essential to a competitive long distance market.[5] Again, this explanation pertained solely to the BOCs' landline networks. It was only significantly later, after the U.S. Court of Appeals ruled that extraregional cellular service is a permitted "exchange

---

[3]United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982) aff'd mem. sub nom. Maryland v. U.S., 460 U.S.1001 (1983).

[4]552 F.Supp. at 195.

[5]Id.; Competitive Impact Statement, 47 Fed. Reg. 7170, 7175-76 (Feb. 17, 1982).

telecommunications service" within the meaning of the MFJ,[6] that the MFJ's equal access obligations were extended to most BOC-affiliated cellular operations.[7] Further, this was done by the extension of the MFJ's definition of "exchange telecommunications" to cellular and the automatic operation of the consent decree's terms. Third, and relatedly, the MFJ requirements were applied to BOC cellular operations as a means of enforcing the decree's prohibition upon interLATA telecommunications services. Absent such constraints, the decree court perceived an opportunity for the BOCs to "evade the basic interexchange services restriction by the simple expedient of constructing a connection between its mobile telecommunications switching offices and any of their standard end offices, thus providing long distance service throughout the country...."[8]

---

[6]United States v. Western Electric Co., 797 F.2d 1082 (D.C. Cir. 1986)

[7]See United States v. Western Electric Co., No.82-1092, para.8 (D.D.C. Feb. 26, 1986) (permitting PacTel acquisition of extraregional cellular operations subject to equal access obligations); United States v. Western Electric Co., No. 82-1092, para.5 (D.D.C. Oct. 31, 1986) (permitting BellSouth acquisition of controlling and minority interests in extraregional cellular operations and imposing equal access obligations upon those cellular operations in which BellSouth interest would have a substantial investment).

[8]673 F. Supp. at 551. It should be noted that the Department of Justice has pending before it a request for waiver of the decree's prohibition against interLATA cellular services as well as removal of the equal access obligations as they apply to the RBOCs' cellular operations. Motion of the Bell Companies for Removal of Mobile and Other Wireless Services from the Scope of the Interexchange Restriction and Equal Access Requirement of Section II of the Decree, United States v. Western Electric Co., CA No. 82-0192 (D.D.C. submitted to DOJ Dec. 13, 1991). In addition, the Department is on record recommending removal of the decree's equal

The uniqueness that led to an equal access requirement for the BOCs' cellular operations is underscored by reference to the otherwise analogous GTE consent decree.[9] While the GTE decree was modeled in relevant respects after the equal access requirements of the MFJ, it did not include such requirements for GTE's cellular operations. Given that neither the Antitrust Division nor the antitrust court have deemed it appropriate or desirable to include such an obligation, the FCC should view as dubious any proposition that a regulatory mandate to the same effect could truly promote competition in the interexchange market. Indeed, as discussed more fully below, the only instances in which the FCC has chosen to extend equal access obligations are inapposite to the instant circumstance.

II. THE FCC HAS CHOSEN TO IMPOSE ITS OWN EQUAL ACCESS OBLIGATIONS ONLY UPON FINDING A BOTTLENECK THAT IMPAIRS CONSUMER WELFARE.

The FCC has extended equal access obligations for access to long distance telephone services in only two limited circumstances -- independent telephone companies' landline networks and operator services/pay telephone providers. The rationales for imposing such requirements in these contexts plainly do not apply to cellular. In the former case, the Commission found that interconnection to

---

access restrictions for cellular services. Reply of the United States in Support of its Motion for Partial Removal of the Line-of-Business Restrictions at 24, United States v. Western Electric Co., 673 F.Supp. 525 (D.D.C. 1987).

[9]United States v. GTE Corp., 1985-1 Trade Cas. ¶66,355 (D.D.C. 1984).

the landline networks of the independent telephone companies "often represents the sole means for competitive carriers to access their customers."[10] The FCC expressly recognized that the MFJ's competitive rationale for requiring the BOC local exchanges to provide equal access of the BOCs was fully applicable to the independents.[11]

Similarly, in the case of pay telephone operators, an analogous (albeit highly localized) bottleneck exists, prompting action by both the FCC[12] and Congress.[13] Moreover, in the latter instance, there was considerable evidence that the local bottleneck had resulted in substantial customer exploitation. "Widespread consumer dissatisfaction" with such OSP practices as call "splashing" as well as the dire lack of customer information led the Commission and the Congress to take special action.[14] Equal access was a logical remedy (among others) for these problems.

---

[10]MTS/WATS Market Structure (Phase II), 94 F.C.C. 2d 292, 298 (1983).

[11]Id. at 295-98. The Commission cited other reasons for its actions, including the benefits of nationwide availability of equal access in order to promote a more efficient national telephone network and recent controversies that had arisen over interconnection arrangements. These reasons are similarly inapposite to the instant case.

[12]See Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744 (1991); Telecommunications Research & Action Center v. Central Corp., 4 FCC Rcd 2157 (CCB 1989).

[13]Telephone Operator Consumer Services Improvement Act, 47 U.S.C.A. § 266 (1991).

[14]See, e.g., Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 4736 (1991).

Of course, neither of these circumstances is relevant to cellular service. At the retail level, there is no real question but that cellular service is available on a competitive basis.[15] Both facilities-based cellular companies as well as cellular resellers compete in the provision of services to end users, and the scope of that competitive activity includes the terms and conditions of offering long distance services. Thus, in the unlikely event an independent cellular licensee were to try to over-price long distance service, cellular customers would have numerous options available. They could turn to any of the many resellers in the local market offering superior terms. Customers also could subscribe to the BOC-affiliated cellular company in order to obtain long distance services from a presubscribed carrier. Due to the BOCs' extensive participation in cellular services nationwide, this latter option is available in cellular markets covering nearly 95% of the population in the nation's 50 largest markets. Indeed, as MCI notes elsewhere,

> "The BOCs combined have over 212.5 million in population covered by [cellular] systems they control, compared to 61.7 million for McCaw, and 54.5 million for GTE. The BOCs own or are affiliated with 80 percent of the licensees in the top 10 markets in the nation. At least one provider in each of the top 10 markets is a BOC. In 6 of the top 10 markets, BOCs control or are affiliated with <u>both</u> the wireline and non-wireline licensees.... BOCs own or are affiliated with a licensee in all but two of the top 50 markets. BOCs have an ownership interest in fully two-thirds of the 100 licensees in those

---

[15]<u>See</u> Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028 (1992). The Commission has observed that facilities-based cellular carriers "not only compete against each other, both directly and through agents, but also with numerous resellers." <u>Id</u>. at ¶10, 7 FCC Rec at 4029.

markets. The BOCs also have substantial interests in Rural Service Area licensees...."[16]

Furthermore, non-BOC cellular companies are making demonstrably efficient choices on behalf of their customers with respect to the provisioning of long distance services. Indeed, interexchange carriers appear to compete vigorously for the opportunity to meet the long distance requirements of non-BOC cellular companies.[17] And there is no suggestion that cellular subscribers are being forced to pay above-market rates for their long distance calls.[18] The very fact that non-BOC cellular licensees are successfully competing against BOC cellular competitors without offering customers presubscription

---

[16]MCI's Opposition to the BOCs' Motion to Eliminate the Interexchange and Equal Access Restrictions for All Current and Future "Wireless" Technologies at 5-6, United States v. Western Electric Co., C.A. No. 82-0192 (D.D.C. submitted to DOJ May 4, 1992)(footnotes omitted).

[17]Any concerns that cellular customers are paying supracompetitive rates for interexchange calls can be addressed by forcing interexchange carriers to pass through their savings to cellular customers. Cellular carriers' access tariffs typically have no charge associated with originating cellular traffic; while this affords interexchange carriers dramatic savings compared to the access charges paid local exchange carriers for originating landline traffic, interexchange rates are the same for cellular and landline customers.

[18]The non-BOC cellular companies are, in reality, resellers of long distance service. As Sprint notes elsewhere, these cellular carriers, like any other long distance reseller, incur billing and collection expenses; write-offs for uncollectibles and certain types of fraud; and customer service. Accordingly, "Sprint is unaware of any unique characteristics of the cellular market which would enable cellular providers to provide resold long distance services much more efficiently than the underlying long distance carriers." Opposition of Sprint at 14, United States v. Western Electric Co., C.A. No. 82-0192 (D.D.C. submitted to DOJ April 27, 1992).

opportunities plainly shows that presubscription is relatively unimportant to cellular consumers.

The general absence of state regulation in this area serves as confirmation of these facts. An overwhelming majority of the states permit cellular service to be provided free of retail price regulation.[19] This plainly indicates that the states have determined that the cellular marketplace is performing satisfactorily, and moreover, that government intervention is unnecessary. When coupled with the substantial costs such requirements would impose, as discussed below, it is plain that the MCI petition disserves the public interest.

III. CELLULAR CARRIERS AND THEIR CUSTOMERS WOULD INCUR SUBSTANTIAL COSTS IF AN EQUAL ACCESS REQUIREMENT WERE IMPOSED.

Nowhere does the MCI petition account for the substantial burdens and costs that would be caused by the adoption of the regulation sought. As a fundamental principle of rational decision-making, these costs must be considered in evaluating the request. Once they are taken into account, any alleged benefit is vastly outweighed by the costs.

Compliance with an equal access rule would require cellular companies to purchase and load software, along with required upgrades in switching hardware in some cases. There are more than

---

[19]See Bundling of Cellular CPE and Cellular Service, supra at ¶ 25, 7 FCC Rcd at 4031. Furthermore, twenty state jurisdictions have actively declined to accept BOC access tariffs for cellular. These state declinations to regulate on a "nationwide, uniform" basis is sound indication of the absence rather than the presence of a problem.

400 non-BOC affiliated cellular companies each of which would incur these costs for each of its licensed systems.[20] CyberTel has estimated its conversion costs to exceed $70,000. The costs per subscriber for converting these systems will be considerably higher than landline equal access conversion costs per subscriber because the number of subscribers served by a typical cellular switch, particularly in the smaller MSA and RSA markets, is much smaller than the number of subscribers served by a landline switch.

Additionally, there are the substantial transaction costs involved in balloting subscribers and administering changes in presubscriptions. As the Commission is fully aware from its experience in landline equal access conversion, these direct costs, as well as the less tangible but no less real costs in such areas as customer confusion, IXCs' allegations of "slamming" practices against one another, and simple good faith errors, are substantial. The taxpayer costs of adjudicating these controversies, as well as administering potentially hundreds of access tariffs, also must be factored into the Commission's analysis. These burdens should not be imposed as offhandedly as the MCI petition assumes without careful calculation of the benefits.[21]

In seeking to impose equal access requirements on all cellular carriers, the MCI petition implicitly would require cellular

---

[20]The MCI petition would appear to advocate equal access obligations upon cellular resellers as well as cellular licensees.

[21]Even the MFJ contemplates a cost/benefit analysis for offices served by switches that characteristically serve fewer than 10,000 access lines. See MFJ, app. B, ¶A (3).

carriers not now subject to the MFJ to conform their cellular serving areas to LATA boundaries. This would inconvenience cellular subscribers and impose additional costs on their cellular service by forcing cellular carriers to reduce the size of many cellular serving areas and discontinue features such as intersystem handoff and automatic call delivery.

In its petition, MCI addresses equal access, but does not mention exchange areas, or LATAs.[22] Yet equal access is meaningless without a precise definition of the geographic scope of the serving area within which a carrier must make equal access interconnection available.[23] LATA boundaries were drawn for completely different purposes than the cellular MSA and RSA serving areas, and their boundaries often diverge significantly, a fact that has required the Justice Department and decree court to consider nearly one hundred individual waiver requests to permit BOC-affiliated cellular carriers to conform their FCC licensed MSA

---

[22]The term "LATA" stands for Local Access and Transport Area, and was coined for use in the MFJ proceedings to avoid confusing a traditional telephone "exchange area" with the unique geographic areas created under the terms of the antitrust decree. United States v. Western Electric Co., 569 F.Supp. 990, 993 n.9 (D.D.C. 1983).

[23]The equal access requirement of the MFJ is set forth in section II(A) of the decree, which refers to "exchange access" and "exchange services." The linkage between the equal access requirement and the LATA boundaries is derived from the MFJ definitions of exchange access and exchange services (defined in terms of the "origination or termination of interexchange telecommunications"), and interexchange telecommunications (defined in terms of telecommunications between "exchange telecommunications areas"). See MFJ, section IV; see also, Competitive Impact Statement, 47 Fed. Reg. at 7176.

and RSA service areas to the MFJ's LATA boundaries.[24] Grant of the MCI petition would embroil the Commission in a similar case-by-case waiver process for all cellular carriers not subject to the MFJ.[25] And because LATA boundaries continually are being adjusted or modified to reflect changes to the landline telephone network, the waiver process, and the burden on the FCC and the cellular industry, would never end.

Finally, the Commission must consider the costs to its own commitment to its deregulation policies. When a cellular company offers its customers long distance service, it is in effect acting no differently than any other reseller of long distance service.[26] Since 1982, the FCC has had a policy of not regulating resale, based upon the proven presumption that resellers will charge rates

---

[24]LATAs, in general, reflect how the BOC landline telephone networks were engineered prior to divestiture, i.e., they reflect the geographic area served by a Class Four switch. See United States v. Western Electric Co., 569 F.Supp. at 1002-04, 1011. The Commission, noting that cellular licensing areas were shaped without regard to LATA boundaries, urged the decree court to not apply the LATA boundaries to cellular service. FCC Reply on Application of AT&T and BOCs for Approval of LATAs at 4, United States v. Western Electric Co., CA No. 82-0192 (D.D.C. Dec. 15, 1982).

[25]This raises a host of issues. Since the Justice Department and decree court lack jurisdiction, would the Commission set up a separate waiver structure for the hundreds of non-BOC cellular carriers? No doubt, inconsistencies would arise between FCC and MFJ waivers that would need to be resolved by further waivers. See generally, Comments of Southwestern Bell Corporation on MCI's Petition for Rulemaking at 9-11, RM-8012 (Aug. 3, 1992).

[26]With only rare exception, most cellular companies are unaffiliated with any long distance carrier. If MCI fears that discrimination would occur in those rare exceptions, the complaint process is available to it. Certainly MCI has proffered no evidence to support such a hypothesis.

that are just and reasonable.[27] MCI, a principal beneficiary of the FCC's deregulatory policies, has offered no justification to reverse course here.

These direct and indirect costs would be incurred without any compensating benefit, as discussed earlier. Even assuming arguendo that some modest benefit could occur for long distance calling over cellular phones, the effect on the interexchange markets overall would be tiny. First, long distance calls over cellular comprise less than one per cent of all long distance traffic. Nearly ninety-five percent of the population in the top fifty cellular markets has at least one RBOC to choose from, i.e., cellular customers can subscribe to a cellular carrier which is already subject to equal access obligations. It is quite literally true then, that even if rates were reduced on the very modest amount of remaining long distance calls, the expenses incurred to achieve any imagined reduction would vastly exceed the benefit to consumers. The MCI petition presents a perfect opportunity for the Commission to eschew imposing an unnecessary regulatory burden.[28]

---

[27]See Competitive Carrier Rulemaking, Second Report and Order in CC Dkt. No. 79-252, 91 F.C.C. 2d 59 (1982).

[28]See, Report of the Federal Communications Commission Regarding the President's Regulatory Reform Program at 33, April 28, 1992 ("rigorous cost/benefit or economic impact analyses [will] be prepared for major decisions that come before the Commission.").

CONCLUSION

MCI has presented no rational basis for Commission action. CTIA therefore respectfully urges the Commission to dismiss the petition.

Respectfully submitted,

Michael F. Altschul
General Counsel

Cellular Telecommunications
Industry Association
1133 21st Street, N.W.
Third Floor
Washington, D.C. 20036
(202) 785-0081

September 2, 1992

Certificate of Service

I, Jack W. Whitley, hereby certify that on September 2, 1992, copies of the of the foregoing Comments of the Cellular Telecommunications Industry Association on the Petition for Rulemaking of MCI have been served by first class United States mail, postage prepaid, on the parties listed below:

Larry A. Blosser
Counsel for MCI
1801 Pennsylvania Avenue, N.W.
Washington, D.C.

Michael Mandingo
FCC Common Carrier Bureau
1919 M Street, N.W.
Washington, D.C. 20554

Michael K. Kellogg
Mayer, Brown & Platt
Counsel for the Regional Bell Holding Companies
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Thomas P. Hester
Counsel for Ameritech
30 South Wacker Drive
Chicago, IL 60606

William B. Barfield
Counsel for BellSouth Corp.
1155 Peachtree Street, N.E.
Suite 1800
Atlanta, GA 30367

Raymond F. Burke
Counsel for NYNEX Corp.
1113 Westchester Avenue
White Plains, NY 10604

Charles P. Russ
Counsel for U S West, Inc.
7800 East Orchard Road
Englewood, CO 80111

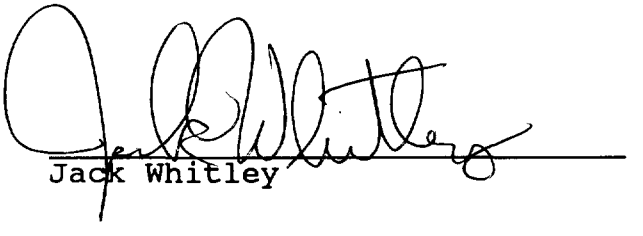
Richard W. Odgers
Counsel for Pacific Telesis
130 Kearney Street
Suite 3651
San Francisco, CA 94108

James L. Wurtz
Counsel for Pacific Telesis
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

James D. Ellis
Counsel for Southwestern Bell Corporation
One Bell Center, Room 3512
St. Louis, MO 63101-3099

Wayne Watts
Counsel for Southwestern Bell Mobile Systems, Inc.
17330 Preston Road, Suite 100A
Dallas, Texas 75252

Helen M. Mickiewicz
Counsel for the California PUC
505 Van Ness Avenue
San Francisco, CA 94102



Jack Whitley